IT 02-0017-GIL 05/21/2002 CREDITS – FOREIGN TAX

> General Information Letter: The 60% of net capital gains which is excluded from Wisconsin income tax may not be counted as base income taxed by both Illinois and Wisconsin.

May 21, 2002

Dear:

This is in response to your letter to Diane Sporer dated May 15, 2002. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. *See* 86 Ill. Adm. Code 1200.120(b) and (c), which may be found on the Department's web site at www.revenue.state.il.us.

In your letter you have stated the following:

> I reviewed the letter you sent to MR. & MS. Z on Wisconsin and the exclusion they have on capital gains versus the foreign tax credit in Illinois. After thoroughly reviewing the case, it appears your position regarding Hutchins is tenuous, at best. That case only identified as identical income and the case can definitely be made that identical income is being taxed at both states. There was never an issue regarding exemptions and credits from one state to another. Therefore we believe the reason for you using Hutchins as you have (and several cases in the past) has been erroneous all along. This also seems to be somewhat supported by statements made by judges when taxpayers have decided to take this further. Therefore, we feel your position as far as Hutchins is concerned regarding this case, is invalid and the return stands as filed. There is no amount due to the state of Illinois.

Response

Section 601(b)(3) of the Illinois Income Tax Act (35 ILCS 5/601) provides in part:

> The aggregate amount of tax which is imposed upon or measured by income and which is paid by a resident for a taxable year to another state or states on income which is also subject to the tax imposed by subsections 201(a) and (b) of this Act shall be credited against the tax imposed by subsections 201(a) and (b) otherwise due under this Act for such taxable year. The aggregate credit provided under this paragraph shall not exceed that amount which bears the same ratio to the tax imposed by subsections 201(a) and (b) otherwise due under this Act as the amount of the taxpayer's base income subject to tax both by such other state or states and by this State bears to his total base income subject to tax by this State for the taxable year.

In the Zs' case, $21,070 in capital gain was included in the taxpayers' 2000 federal adjusted gross income, and was therefore included in their Illinois base income. According to the copy of the Wisconsin income tax return attached to the Zs' Illinois income tax return for 2000, this capital gain was from a Wisconsin source. However, Wisconsin allows a 60% exclusion for net long-term capital gains otherwise includible in Wisconsin income. Accordingly, only $8,428 in capital gains was included in Wisconsin income on the Zs' Wisconsin income tax return.

This exact situation was presented to the court in *Hutchins v. Dept. of Revenue,* No. 79 MI – 130115 (Cook County Circuit Court October, 1979) (a copy of which is enclosed). In that case, Ohio allowed the taxpayers to exclude 50% of their net long-term capital gains, while Illinois taxed them on 100% of their net long-term capital gains. The court held that only 50% of the net long-term capital gains was "subject to tax" in Ohio, and upheld the Department's computation of the limitation on the aggregate credit in the second sentence of Section 601(b)(3) quoted above.

This case is directly on point on the issue presented in this case. Under that decision, only 40% of the Zs' net long-term capital gains, or $8,428, was "subject to tax" in Wisconsin. Accordingly, the limitation on the aggregate credit must be computed using only this $8,428 amount, not the $21,070 amount included in Illinois base income.

I am not aware of any authority to the contrary. Accordingly, the computation of the limitation on the Zs' credit is correct.

As stated above, this is a general information letter which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b). If you have any further questions, you may contact me at (217) 782-7055.

Sincerely,

Paul S. Caselton
Deputy General Counsel -- Income Tax